

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-179—sSB 1012

Environment Committee

Planning and Development Committee

**AN ACT CONCERNING THE PERMITTING OF CERTAIN COASTAL
STRUCTURES BY THE DEPARTMENT OF ENERGY AND
ENVIRONMENTAL PROTECTION**

SUMMARY: This act makes many changes in the state's Coastal Management Act (CMA) and laws related to conducting certain activities in the state's tidal wetlands and coastal, tidal, or navigable waters. Among other things, it:

1. allows towns and property owners to temporarily fortify property above the coastal jurisdiction line before a hurricane or tropical storm;
2. expands the types of structures and activities that may be eligible for a certificate of permission from the Department of Energy and Environmental Protection (DEEP) and requires the DEEP commissioner to issue these certificates for certain previously unauthorized structures;
3. allows shoreline flood and erosion control structure applicants to request a hearing and an advisory engineering evaluation when the DEEP commissioner makes a tentative determination to deny certain permit applications;
4. invalidates and discharges DEEP civil penalty orders that are not judicially enforced within 15 years;
5. allows municipal zoning commissions to exempt residential elevated decks from coastal site plan review;
6. allows the DEEP commissioner to require anyone removing material from the state's tidal, coastal, or navigable waters to make it available to coastal towns and certain districts for beach nourishment or habitat restoration;
7. makes it a policy under the CMA for agencies to encourage cooperative use of confined aquatic disposal cells for dredged material; and
8. expands when structural solutions (e.g., seawalls) can be used to protect structures under the CMA.

The act requires (1) the state and towns to consider federal National Oceanic and Atmospheric Administration (NOAA) sea level change scenarios when developing certain plans and programs and (2) UConn to update the scenarios.

It also requires DEEP to (1) acquire information relevant to developing a best practices guide for coastal structures permitting from certain governmental and commercial entities and (2) establish a pilot program to help certain residential property owners understand their rights and responsibilities under coastal management and water resources laws.

The act also makes several minor and technical changes.

EFFECTIVE DATE: October 1, 2013, except the requirement for DEEP to consult on information related to a best practices guide takes effect upon passage.

§ 11 — TEMPORARY FORTIFICATION

The act allows towns and property owners to fortify property above the coastal jurisdiction line with temporary structures (e.g., sandbags or blocks) when the (1) National Hurricane Center issues a hurricane or tropical storm warning for any part of the state or (2) DEEP commissioner authorizes it (see BACKGROUND). The structures may be erected up to 24 hours before the storm is predicted to start. They must be removed within 48 hours after the warning is lifted unless the commissioner extends the deadline.

§§ 9 & 10 — CERTIFICATE OF PERMISSION

Eligible Activities

By law, certain activities involving such things as dredging, building structures, or maintaining fill in the state's tidal wetlands or tidal, coastal, or navigable waters may be eligible for a certificate of permission (COP) from DEEP instead of needing an individual permit. Substantial maintenance or repair of existing authorized structures, fill, obstructions, or encroachments is one such example. The act makes the following activities also potentially eligible for a COP:

1. beach nourishment undertaken or supervised by DEEP;
2. substantial maintenance of structures, fill, obstructions, or encroachments put in place between June 24, 1939 and January 1, 1995, if continuously maintained and serviceable; and
3. minor alterations or amendments to activities completed between June 24, 1939 and January 1, 1995.

COP Exemption

The law exempts certain activities from needing a COP or a DEEP permit, including routine maintenance of (1) permitted structures, fill, obstructions, or encroachments and (2) structures, fill, obstructions, or encroachments in place before June 24, 1939 and continuously maintained and serviceable since then.

Under prior law, "routine maintenance" included replacing or repairing up to 25% of DEEP-approved pilings in any one year, as long as their footprint, elevation, and materials were unchanged. The act expands, from 25% to 50%, the proportion of these pilings that can be repaired or replaced.

COP Approval

The act requires, rather than allows, the DEEP commissioner to issue a COP for certain unauthorized activities and reduces the applicants' burden when seeking a COP for them.

Under prior law, the commissioner could issue a COP for an unauthorized activity completed before January 1, 1995, if the applicant demonstrated that the activity complied with all applicable standards and criteria. The act instead requires him to issue a COP for such an activity when the applicant shows

substantial compliance. It also requires, instead of allows, the commissioner to authorize maintenance of or minor additions to such an activity, including using alternative materials for (1) deck surfacing and (2) seawalls designed using generally accepted engineering practices.

The act eliminates the commissioner's authority to consider, when deciding whether to issue a COP for these activities conducted without prior authorization, (1) the date when the applicant acquired the subject property; (2) if the applicant is not otherwise liable for the unauthorized activity; and (3) if the applicant knew, or had reason to know, of the unauthorized activity.

It also eliminates his authority to require a tidal wetlands or coastal structure permit application when he finds that changes in the conditions or circumstances of a permitted structure, fill, obstruction, or encroachment are likely to significantly affect the environment or coastal resources.

Mediation

Under the act, an applicant that is denied a COP may request, within 30 days after the initial denial is issued, a meeting with a DEEP Office of Adjudication mediator. The purpose of the mediation is to try to resolve any disagreement about the initial denial.

Waterfront Access Easements

The act specifies that waterfront access easements created after January 1, 1995 do not entitle impacted property owners to build additional structures for river or shoreline access.

§ 13 — ADVISORY ENGINEERING EVALUATION

Under the act, when the DEEP commissioner makes a tentative determination to deny a permit application prepared by a licensed professional engineer for a shoreline flood and erosion control structure (e.g., seawall, jetty, riprap), such as one to conduct certain activities in tidal wetlands or tidal, coastal, or navigable waters, the applicant may request (1) a hearing on the application and (2) an advisory engineering evaluation from the Connecticut Academy of Science and Engineering (CASE) on the application's engineering aspects. CASE is a private, nonprofit, public-service institution modeled after the National Academy of Sciences that identifies and studies issues and technological advances and provides advice on science- and technology-related issues.

The hearing request must be submitted in writing to the commissioner within 30 days after he publishes the notice of tentative determination. The advisory evaluation request must be submitted with the hearing request and include the fee set by CASE in consultation with the commissioner.

CASE must review submissions from all parties to the application and meet with the parties, as needed, to resolve any differences. It must issue a written advisory engineering evaluation within 120 days of receiving payment and the submissions, but it may extend this deadline by 60 days. The commissioner must consider CASE's evaluation, but it is not binding on him.

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The commissioner must schedule a hearing on the application, held in conformity with the Uniform Administrative Procedure Act, within 30 days after CASE issues its evaluation. An applicant may, any time prior to the hearing, withdraw the hearing request.

§ 14 — EXPIRATION OF ORDERS

By law, the DEEP commissioner is authorized to impose civil penalties for certain violations. The act makes a DEEP civil penalty order invalid and discharged after 15 years unless the commissioner takes judicial action to enforce the order before then.

§ 7 — COASTAL SITE PLAN REVIEW EXCEPTION

Under the CMA, towns review coastal site plans for certain activities conducted at least partly in the coastal boundary and landward of the mean high water mark (see BACKGROUND). A coastal site plan must be filed by an applicant with the municipal zoning commission to help determine if a proposed building, use, structure, or shoreline flood and erosion control structure conforms to municipal zoning regulations and certain state laws.

The act allows municipal zoning commissions to exempt, by regulation, from coastal site plan review constructing or modifying residential elevated decks. The law already allows these commissions to exempt constructing or modifying such things as residential walks, terraces, driveways, docks, and detached accessory structures.

§ 8 — USE OF SAND, GRAVEL, AND OTHER MATERIAL

By law, anyone seeking to dredge, erect a structure, or place fill, an obstruction, or an encroachment in the state's tidal, coastal, or navigable waters, waterward of the coastal jurisdiction line, must obtain a permit from DEEP.

The act authorizes DEEP's commissioner to require anyone removing sand, gravel, or other material waterward of the mean high water mark pursuant to a permit to make it available for authorized beach nourishment or habitat restoration to coastal towns and special taxing districts or districts created by special act to plan, maintain, and manage flood or erosion control systems. Towns accepting these materials must pay the transport costs and the districts must pay a reasonable fee for the materials.

§ 12 — CMA POLICY CHANGES

The CMA sets goals and policies to balance development and preservation of the state's coastal resources. It provides policies for government agencies to follow when carrying out their responsibilities under the CMA in the coastal boundary.

The act makes it a policy for federal, state, and local agencies to encourage cooperative use of confined aquatic disposal cells for dredged material in appropriate circumstances. These cells are depressions at the bottom of a harbor

or other aquatic areas that are used to manage contaminated sediments.

The act also makes it a policy for these agencies to allow using structural solutions when it is necessary and unavoidable to protect businesses, homes, or attached or integral substantial appurtenances built by January 1, 1995, instead of only inhabited structures as allowed under prior law. Existing law allows structural solutions to protect infrastructure facilities, burial grounds, and water-dependent uses. Structural solutions are allowed if there is no feasible, less environmentally damaging alternative and all reasonable mitigation efforts have been taken to minimize adverse environmental impacts.

§ 2 — RISE IN SEA LEVEL DEFINITION

The act specifies that “rise in sea level” under the CMA is the average of the most recent equivalent per decade rise in tidal and coastal waters surface level, as documented in NOAA online or printed publications for NOAA’s Bridgeport and New London tide gauges. Under prior law, it was the average as documented for an annual, decadal, or centenary period at any state sites specified in NOAA publications.

§§ 3-6 — APPLYING NOAA SEA LEVEL CHANGE SCENARIOS

Plans of Conservation and Development

State. Prior law required the state Office of Policy and Management (OPM) to consider the risks associated with increased coastal erosion from a rise in sea level when revising the state’s plan of conservation and development (Plan of C&D). The act instead requires OPM to consider the risks from increased coastal erosion as anticipated in sea level change scenarios published in NOAA’s Technical Report OAR CPO-1 (see BACKGROUND). By law, OPM must also (1) identify impacts of the increased erosion on infrastructure and natural resources and (2) make recommendations for siting future infrastructure and development that minimizes use of erosion-prone areas. The state Plan of C&D is revised every five years.

Municipal. The law generally requires municipal planning commissions to adopt a municipal Plan of C&D at least once every 10 years, and regularly review and maintain it. These plans are statements of policies, goals, and standards for towns’ physical and economic development.

The act requires the commissions, or special committees appointed by them, to consider the sea level change scenarios in NOAA’s Technical Report OAR CPO-1 when preparing their Plans of C&D.

Civil Preparedness Plan and Program

By law, the commissioner of emergency services and public protection must prepare a comprehensive state plan and program for civil preparedness (activities and measures to address certain disasters or emergencies), subject to the governor’s approval. Beginning October 1, 2013, the plan and program must consider the sea level change scenarios from NOAA’s Technical Report OAR

CPO-1.

Municipal Evacuation or Hazard Mitigation Plan

Also beginning October 1, 2013, towns must consider the sea level change scenarios from NOAA's Technical Report OAR CPO-1 when preparing a municipal evacuation or hazard mitigation plan. By law, "hazard mitigation" includes actions taken to reduce or eliminate long-term risk to human life, infrastructure, and property from natural hazards (e.g., flooding, high winds, and wildfires).

UConn Update

Under the act, UConn's Marine Sciences Division must update the sea level change scenarios from NOAA's Technical Report OAR CPO-1 at least once every 10 years. At least 90 days before any update to the scenarios, the division must conduct at least one public hearing. It must conduct the hearing and update the scenarios within available resources.

§ 1 — BEST PRACTICES GUIDE INFORMATION

Under the act, DEEP must acquire information related to developing a best practices guide for coastal structures permitting. For this purpose, DEEP must, by October 1, 2013, consult with (1) other coastal states' environmental protection and planning and development agencies, (2) commercial entities professionally engaged in activities that require permitting, and (3) the federal government. The act does not require DEEP to develop such a guide by any deadline.

Within 90 days after completing the consultations, the DEEP commissioner must submit a summary of the consultations' results to the chairs and ranking members of the Environment and Planning and Development committees.

§ 15 — COASTAL VIOLATION PILOT PROGRAM

The act requires the DEEP commissioner to establish a two-year pilot program for homeowners who receive noncompliance notices from DEEP for violating the state's coastal management or water resources laws. The program, operating from October 1, 2013 to September 30, 2015, must help owners understand their rights and responsibilities under these laws. The commissioner must submit a summary of the pilot program to the Environment and Planning and Development committees by January 1, 2016.

BACKGROUND

Coastal Jurisdiction Line

The "coastal jurisdiction line" is the location of the topographical elevation of the highest predicted tide from 1983 to 2001. For any of the state's tidal, coastal, or navigable waters upstream of a tide gate, weir, or other device that modifies tidal water flow, it is the elevation of mean high water found at the device's

downstream location.

Coastal Boundary

The “coastal boundary,” within the state’s coastal area, is the furthest inland of (1) the 100-year-frequency coastal flood zone, (2) a 1,000-foot linear setback from the mean high water mark, or (3) a 1,000-foot linear setback from the inland boundary of the tidal wetlands.

Mean High Water Mark

The “mean high water mark” is the line on the shore indicating the average shoreward extent of all high tides. It also denotes the seaward limit of private property ownership in Connecticut.

NOAA Technical Report OAR CPO-1

The December 6, 2012 NOAA Technical Report OAR CPO-1 entitled, “Global Sea Level Rise Scenarios for the United States National Climate Assessment,” provides sea level rise scenarios to help experts and stakeholders analyze vulnerability, impacts, and adaptation strategies. It identifies four global mean sea level rise scenarios ranging from eight inches to 6.6 feet by 2100. The report specifies that the scenarios should be used with local and regional information on climatic, physical, ecological, and biological processes and the coastal communities’ culture and economy.

Related Act

PA 13-209 expands the circumstances where the DEEP commissioner must hold a public hearing for a permit to conduct certain activities in tidal, coastal, or navigable waters. It also allows him to (1) set the fee, by regulation, for beneficial or commercial use of sand, gravel, or other material removed pursuant to a permit in these waters and (2) waive the fee.

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